Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE's Request for Declaratory Ruling Regarding	)	CC Docket No. 99-143
The Use of Section 252(i) To Opt Into Provisions	)	
Containing Non-Cost-Based Rates	)	

COMMENTS

Sprint Corporation hereby respectfully submits its comments opposing GTE's request for declaratory ruling in the above-captioned proceeding. In its Petition, GTE requests that the Commission rule that telecommunications carriers are not allowed to use section 252(i) of the Communications Act to opt into provisions of interconnection agreements where the cost or rate element in a provision is no longer cost-based. In the alternative, GTE asks the Commission to hold any complaints concerning this issue in abeyance and consider the use of section 252(i) for non-cost-based-rates and costs issue in the *ISP-Bound Traffic* proceeding.[1] GTE cites two situations in which CLECs have requested to opt into provisions of interconnection agreements which GTE alleges are no longer cost-based: where the ILEC is required to pay reciprocal compensation on ISP-bound traffic, and where CLECs receive compensation based on an ILEC's switching rates.

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking released February 26, 1999 ("*ISP-Bound Traffic Declaratory Ruling and NPRM*").

GTE's petition should be denied. The rates contained in an interconnection agreement are presumably based on the costs to provide those services or elements over the life of the term agreement. It is possible that on any given day in that term, the rates charged may be higher or lower than the actual costs incurred. If GTE's proposal is adopted, it would essentially eviscerate the opt-in requirement, since the ILEC could claim at any point in time that the rates included in the interconnection agreement were no longer cost-based, and that therefore no other carrier could opt into the agreement.

GTE's proposal also presents serious administrative difficulties. For example, GTE does not explain whether the ILEC would even be required to demonstrate that its rates are no longer cost-based; what kind of showing would be needed to prove that the rates are below cost; how much below costs the rates must allegedly be before the opt-in alternative is no longer available; or whether the ILEC will adjust interconnection rates downward if its costs turn out to be lower than expected. Furthermore, there is much room for dispute over the definition of the term "cost-based." Even if parties were to agree that TELRIC was the appropriate costing standard, GTE has proven time and again in state arbitration and cost proceedings that its interpretation of an appropriate derivation of prices based on a TELRIC costing standard is controversial. Thus, GTE's unilateral determination that certain rates are no longer cost-based is certain to create disagreement. Even if GTE's proposal were justified as a matter of public policy (which Sprint believes is not the case), its proposal is so bare-bones as to be fatally flawed procedurally.

GTE is mistaken in asserting that "Section 51.809 of the Commission's Rules provides that ILECs do not have to make available under Section 252(i) provisions of agreements in which the costs of providing a particular interconnection, service, or element to the requesting carrier are no longer cost-based" (Petition, p. 4). In fact, Section 51.809(b)(1) states that the

ILEC need not provide an interconnection, service or element to other requesting carriers when "the costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier *are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement...*" (emphasis added). In entering into an interconnection agreement, GTE and other ILECs assume a business risk that the agreed-upon rates are cost-based and compensatory over the life of the agreement. If the ILEC miscalculated the cost of providing a particular service or element in negotiating the original interconnection agreement, it is liable for the business and financial risks associated with its error and with the negotiated agreement, so long as the cost of providing a service or element to subsequent requesting carriers is less than or equal to the cost of serving the initial carrier. Furthermore, when an ILEC agrees to the rates and terms in an interconnection agreement, it is with the full knowledge and understanding that such rates and terms must be made available to other carriers under the "most favored nation" standard. There is no basis for insulating an ILEC against downside business risks -- including the risk that the offering will be requested by carriers other than the one with which the interconnection agreement was initially made -- and GTE's attempt to gain such protection should be dismissed.

Sprint recognizes that costs do change over time. Therefore, it is reasonable to limit the availability of services or elements to the term specified in the interconnection agreement; that is, a carrier opting into an existing agreement should be allowed to obtain services or elements in that agreement only for the remaining life of that agreement. This provides requesting carriers "with a reasonable time during which they may benefit from previously negotiated agreements"[2]

[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16140 (para. 1319) (1996).

while protecting the ILEC against a situation in which it remains "subject to the obligations included in [an interconnection] agreement for an indeterminate length of time, without any opportunity for renegotiation, as successive CLECs opt into the agreement."[3]

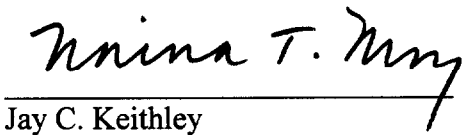
Finally, GTE is mistaken in asserting that the Commission has concluded that "CLEC reciprocal compensation rates for ISP-bound traffic are not cost-based and should therefore not be subject to the provisions of Section 252(i)" (Petition, p. 7, 10). Although the Commission did find that ISP-bound traffic appears to be largely interstate (*ISP-Bound Traffic Declaratory Ruling*, para. 1), it also emphasized that this finding "does not in itself determine whether reciprocal compensation is due in any particular instance" (*id.*), and concluded that "in the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, ...parties should be bound by their existing interconnection agreements, as interpreted by state commissions" (*id.*). Indeed, the Commission's "policy of treating IPS-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic" (*id.*, para. 25).[4] Nothing in the Commission's order in the *ISP-Bound Traffic* proceeding can be construed as a conclusion that existing reciprocal compensation arrangements for ISP-bound traffic are not cost-based or that they are exempt from Section 252(i).

[3] *ISP-Bound Traffic Declaratory Ruling and NPRM*, para. 35.

[4] Given this explicit finding, the Commission should also deny outright GTE's alternative request to hold complaints on reciprocal compensation in abeyance.

Respectfully submitted,

SPRINT CORPORATION.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document in CC Docket No. 99-143 was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 17th day of May, 1999 to the parties listed below.

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